

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,) CASE NO. 4:16-CR-132-A
)
Government,)
) FORT WORTH, TEXAS
VERSUS)
) FEBRUARY 24, 2017
JOSHUA JAMES MILSON (27),)
)
Defendant.) 9:32 A.M.

VOLUME 1 OF 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JOHN McBRYDE
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S :

FOR THE GOVERNMENT: MR. SHAWN SMITH
UNITED STATES DEPARTMENT OF JUSTICE
NORTHERN DISTRICT OF TEXAS
801 Cherry Street, Suite 1700
Fort Worth, Texas 76102-6882
Telephone: 817.252.5200

FOR THE DEFENDANT: MR. RONALD G. COUCH
5005 Colleyville Blvd., Suite 217
Colleyville, Texas 76034
Telephone: 817.514.4918

COURT REPORTER: MS. DEBRA G. SAENZ, CSR, RMR, CRR
501 W. 10th Street, Room 424
Fort Worth, Texas 76102
Telephone: 817.850.6661
E-Mail: debbie.saenz@yahoo.com

Proceedings reported by mechanical stenography, transcript
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P R O C E E D I N G S

February 24, 2017 - 9:32 a.m.

THE COURT: Okay. In this same case, 4:16-CR-132-A, this time it's United States of America versus Joshua James Milson.

And, of course, Mr. Smith's here for the government, and Mr. Couch is here for Mr. Milson.

Mr. Milson, state your name for the record.

THE DEFENDANT: Joshua James Milson.

THE COURT: You appeared before me on October 7, 2016, when you entered a plea of guilty to the offense charged by the second superseding indictment in this case, and that is the offense of possession with intent to deliver a controlled substance, and we're here today for sentencing based on the conviction resulting from that plea of guilty.

Mr. Couch, did you and your client receive in a timely manner the Presentence Report and the addendum to it?

MR. COUCH: Yes, Your Honor.

THE COURT: And did the two of you read those items and then discuss them with each other?

MR. COUCH: We did.

THE COURT: Now, there were some objections originally made and they were withdrawn, so there being no objections to the Presentence Report, the Court adopts as the fact findings of the Court the facts set forth in the

1 Presentence Report as modified or supplemented by the
2 addendum, and the Court adopts as the conclusions of the Court
3 the conclusions expressed in the Presentence Report as
4 modified or supplemented by the addendum.

5 The Court concludes that the total offense level is
6 37; that the Criminal History Category is VI; that the
7 imprisonment range, guideline advisory imprisonment range, is
8 360 to 480 months -- actually, I think it calculated out to
9 360 months to life is what it would be if the defendant had
10 been charged with his true offense conduct, but because of the
11 statutory maximum of 40 years on the offense he was charged
12 with, it becomes 360 months to 480 months.

13 The supervised release range is 4 to 5 years, and
14 the fine range is \$40,000 to \$5 million; and a special
15 assessment of \$100 is mandatory.

16 Okay. You can make whatever statement you would
17 like to make on behalf of your client.

18 *MR. COUCH:* Thank you, Your Honor.

19 A couple of things I would like to point out, and
20 also mentioned in my sentencing memorandum, this gentleman has
21 a bad, lengthy criminal history, that if you examine it
22 closely it shows that most of the offenses that constituted
23 much of the criminal history were committed when he was
24 17-years-old and a few at 18. I think I pointed out that
25 the -- it was 7 pages of convictions when he was 17.

1 I would like the Court to take that into
2 consideration, especially because this gentleman, as the Court
3 is aware, was present when his father and another man drown in
4 a boating accident when he was 12-years-old. This has left
5 him with a lifelong memory that he will never recover from,
6 and I think that's effected his conduct and his behavior,
7 especially during his younger years. He has also been
8 diagnosed as bipolar and a possible diagnosis of
9 Post-Traumatic Stress Disorder because of the drowning.

10 As I also pointed out in the sentencing memorandum,
11 if this gentleman gets the minimum of 360 months, he will be
12 65 years old when he gets out. I think that is an excessive
13 amount of time considering what he's been through during his
14 life.

15 I would submit that somewhere between 240 and 280
16 months would be adequate to not offend the guidelines and
17 still send a message to the community that this activity can't
18 be tolerated.

19 He would like to address the Court. His mother is
20 present and his stepfather is present -- can you stand -- and
21 a family friend, and Ms. Arnold would like to address the
22 Court.

23 *THE COURT:* Thank y'all for being here. You can sit
24 back down.

25 *MR. COUCH:* Ms. Arnold, his aunt, would like to

1 address the Court first, and then Mr. Milson would like to
2 talk.

3 *THE COURT:* Okay. If you want to have somebody else
4 come up and make an address, that's fine.

5 Why don't you say what your name is and the city you
6 live in, and then you can make your statement.

7 *MS. MELANIE ARNOLD:* Melanie Arnold. I'm from
8 Granbury, Texas.

9 *THE COURT:* Okay.

10 *MS. MELANIE ARNOLD:* Your Honor, I'm Josh's aunt.
11 We were real close when he was a kid and -- I don't have
12 anything prepared to say. I'm just going to go off the cuff
13 here.

14 Josh hasn't had good role models. When his father
15 died, I was in federal prison myself, and his uncle, who he
16 was really close to, was also in state prison. And I don't
17 think he ever got any counseling. I got a lot of counseling
18 in federal prison, and I've gotten out and I've done a really
19 good job, and I tried to impress that on Josh. And like I
20 said in my character letter, this is not the 39-year-old man
21 sitting here that's committing these crimes. It's the little
22 boy that saw his father drown.

23 Josh and I talked about it last year because he was
24 losing his kids, and he asked me if I would take custody of
25 his kids. And I know that CPS would never let me do something

1 like that, I'm a convicted criminal, but I would do it for
2 Josh.

3 It's a learned behavior, Your Honor, we know that.
4 He didn't -- nobody knew what was going to happen with Josh.
5 I just wish that -- that we had all seen what was coming. You
6 know, he -- he was a blond-haired, blue-eyed boy that was
7 going to the state prison, three or four times. I don't know
8 how many times I was in prison myself, like I said.

9 But what does a blond, blue-eyed boy do? Where does
10 he get protection? The people that he won't give up, that's
11 who protected him while he was in. And like I said in my
12 letter, he's loyal to a fault, and we all are. I wish that he
13 would have tried to save himself.

14 I didn't try to save myself when I went, when I went
15 to prison. I stood by that man, and I went down, and I got
16 188 months. I got the top of my guideline, and he's still in
17 prison. And I tried to tell Josh, this is not the way to do
18 it. You need to just plead guilty and testify and take
19 every -- every program they offer you, and I'm hoping that
20 Josh, when he gets there, that he'll be able to do the RDAP
21 program, and that he'll be able to do all the programming that
22 I did.

23 And I can't tell you -- I can't stand up here and
24 argue his case or his sentence or how much you give him, but
25 please consider his rehabilitation because every time he's

1 gotten out of state prison, they just set you out on the
2 street. Every time he just went back out to the street.

3 And my brother, who got arrested in 1982, his uncle,
4 he didn't get it until he got out in 2013. He went down five
5 times when I was in prison, and it was just like an open door,
6 open door, open door, open, close, they just keep on. I'm
7 like, let me get out of here and let me show you how to do
8 this, and that's what I did.

9 Well, when my brother come home in 2013, they put
10 him on a GPS monitor, they put him -- he couldn't go out on
11 the front porch without it being down on his paper for his
12 parole officer to see he was going out on the front porch, but
13 he never got that. They just set him out.

14 And what did he do? He would do good for a little
15 while. Well, he couldn't make any money. He couldn't make a
16 living. He couldn't support his kids, couldn't support his
17 family, so he would go back to doing what he knew where the
18 money was.

19 We love Josh, and he does have a good, loving
20 family. And we're all -- we're all cleaned up, and we're all
21 ready to stand beside him, and whatever you do today, Your
22 Honor, it's up to you and God. Thank you.

23 *THE COURT:* Okay. Well, thank you for coming up
24 here.

25 *MR. COUCH:* Mr. Milson would like to address the

1 Court.

2 *THE COURT:* Have you said all you want to say,
3 Mr. Couch?

4 *MR. COUCH:* Yes, sir.

5 *THE COURT:* Okay. Mr. Milson, you have the right to
6 make any statement or presentation you would like to make on
7 the subject of mitigation, that is, the things you think the
8 Court should take into account in determining what sentence to
9 impose, or on the subject of sentencing more generally, and at
10 this time I'll invite you to do that.

11 *THE DEFENDANT:* Your Honor, I want to express how
12 sorry I am to my community and to the families that have been
13 involved with this, especially my family and my children.
14 They don't deserve the punishment that they are getting
15 through me being punished for what I've done.

16 As you can see on my paperwork, I did experience a
17 very traumatic thing when I was growing up, when I was 12,
18 watching my father drown trying to save another man, and I've
19 relived that a hundred thousand times every day, and this --
20 drugs and the lifestyles I chose is how I've coped with it.

21 And I've never taken any counseling. I know it
22 doesn't excuse -- excuse me. It doesn't excuse my behavior,
23 Your Honor. I know what I've done -- what I've done was
24 wrong, and I would just like to ask that you take these things
25 into consideration, and please allow me to get some counseling

1 wherever it is that I get sent, and make that available for me
2 and give me a chance to -- I've got three young children. My
3 son is a year old, my life, it breaks my heart, and he doesn't
4 deserve the punishment that he's getting through me. Thank
5 you.

6 *THE COURT:* Okay. Well, you have a very disturbing
7 history. I regret that you had that experience with your
8 father, but that doesn't explain the different things that
9 you've done.

10 Most recently, after you were arrested by the
11 sheriff's office over in Somervell County in January of 2015,
12 you called a person by the name of Rose to retrieve from your
13 truck some -- a magnetic box containing methamphetamine that
14 was hidden in your truck, and he did that, and then he used a
15 little bit of it, apparently, for his own purpose.

16 And when you got out of prison, you found him asleep
17 and beat him with a two-pound, ball-peen hammer because you
18 were upset that your methamphetamine was short a few grams.
19 That's -- that can't be explained by what happened to you as a
20 child.

21 And you also told him -- you threatened harm to his
22 family, if he didn't retrieve that magnetic box containing
23 methamphetamine.

24 You have a very violent tendency and that's
25 disturbing, and then your criminal history is about as bad as

1 any I've ever seen. I've seen a lot of bad criminal histories
2 in defendants in this case, but you've got a terrible one.

3 At age 17, you pleaded guilty to theft, pleaded
4 guilty to burglary of a building -- actually, you've pleaded
5 guilty to several burglary of a building offenses at age 17,
6 it looks like, and you ended up getting a -- and more than one
7 theft conviction at age 17.

8 And then you were sentenced to 10 years
9 imprisonment, but they gave you a special alternative
10 incarceration program, and in 1995 you were placed on 10-year
11 adjudicated shock probation, and then you violated that and
12 that was revoked and you were sent -- given a 9-year sentence
13 in 1996, 9 years of imprisonment.

14 You got out in only 4 years after that, and then you
15 violated your parole. You were given -- put on parole in
16 2000, and you violated that parole.

17 That's been your history. You commit a crime, you
18 get a sentence that ends up not being much of a sentence, and
19 then you violate whatever parole has been imposed on you, and
20 then you go back and it's just an ongoing thing.

21 At age 24, I have 10 offenses -- show that you have
22 10 offenses that you pleaded guilty to at age 17.

23 Then at age 24 -- I suppose that's as soon as you
24 got out of prison or shortly thereafter -- you were convicted
25 of a DWI, and then you were convicted of purchasing and

1 furnishing alcohol to a minor. That was both at age 24.

2 Then at age 25, you were convicted of theft. You
3 pleaded guilty and got a light sentence.

4 Age 26, you were convicted of aggravated assault
5 causing bodily injury, and in that case you -- the victim was
6 hit over the head by a beer bottle and you bit a large piece
7 of his ear off, but you didn't get a sentence that amounted to
8 anything. You got a 9-month sentence.

9 Age 26, again, you were convicted on a plea of
10 guilty of failure to identify.

11 You had two offenses you pleaded guilty to at age
12 27.

13 Now, none of the offenses I've talked about so far,
14 except one of those age 27 offenses, caused you to get any
15 criminal history points, but I'm not sure that made a lot of
16 difference because you maxed out anyway.

17 Then at age 29, you were convicted of theft.

18 At age 30, you were convicted of burglary of a
19 building, and then you also, at that same age, were convicted
20 of failure to identify.

21 At age 32, you were convicted of unauthorized use of
22 a vehicle, theft of copper wire -- three counts of that --
23 evading arrest/detention, all that at age 32.

24 Age 37, driving without a license. You pleaded
25 guilty to that.

1 Age 38, the same thing.

2 And then along the way, you had several offenses
3 that you weren't convicted of, but you admitted you -- you
4 admitted you committed them as pleas in bar. You had a
5 driving while -- without a valid license at age 28. You
6 admitted you committed that offense.

7 At age 30, you admitted you committed the offense of
8 possession of marijuana.

9 At age 32, you admitted you committed the offense of
10 possession of marijuana.

11 Again at age 32, you admitted you committed the
12 offense of driving without a license.

13 I don't think a sentence at the top of the guideline
14 range would be inappropriate, but I'm not going to go that
15 high. However, I am going to impose a sentence of 400 months
16 imprisonment that will run concurrently with any sentence
17 that's imposed in Case Number CR13437 in the 355th District
18 Court of Johnson County, Texas.

19 And I'm also going to impose a term of supervised
20 release of 4 years that will start running once you've
21 completed your sentence of imprisonment, and an obligation to
22 pay a special assessment of \$100. That's payable immediately
23 to the United States of America through the office of the
24 clerk of court here in Fort Worth.

25 I think a sentence of the kind I've described is

1 necessary and appropriate to address all the factors the Court
2 should consider in sentencing under 18 United States Code
3 Section 3553(a).

4 So the Court's ordering and adjudging that the
5 defendant be committed to the custody of the Bureau of Prisons
6 to serve a term of imprisonment of 400 months to run
7 concurrently with the Johnson County -- any sentence he
8 receives in the Johnson County case that I've already
9 mentioned.

10 I'm also ordering that the defendant serve a term of
11 supervised release of 4 years that would start when he's
12 completed his sentence of imprisonment, and the conditions of
13 that supervised release will be the standard conditions that
14 will be set forth in the judgment of conviction and sentence,
15 and the following additional conditions:

16 The defendant shall not commit another federal,
17 state, or local crime.

18 The defendant shall not unlawfully possess a
19 controlled substance.

20 The defendant shall cooperate in the collection of
21 DNA as directed by the probation officer.

22 The defendant shall participate in mental health
23 treatment services as directed by the probation officer until
24 successfully discharged, and those services may include
25 prescribed medications by a licensed physician, and he'll

1 contribute to the cost of those services at the rate of at
2 least \$25 a month.

3 He shall refrain from any unlawful use of a
4 controlled substance and shall submit to one drug test within
5 15 days of release from imprisonment and at least two periodic
6 drug tests thereafter, as directed by the probation officer.

7 He shall participate in a program approved by the
8 probation officer for treatment of narcotic or drug or alcohol
9 dependency that will include testing for the detection of
10 substance use, and he shall abstain from the use of alcohol
11 and all other intoxicants during and after completion of that
12 treatment, and he'll contribute to the cost of those services
13 at the rate of at least \$25 a month.

14 I'm also ordering him to pay a special assessment of
15 \$100. That's payable immediately to the clerk of court here
16 in Fort Worth.

17 Mr. Milson, you have the right to appeal from the
18 sentence I've imposed, if you're dissatisfied with it. That
19 appeal would be to the United States Court of Appeals for the
20 Fifth Circuit.

21 You have the right to appeal in forma pauperis, that
22 means without any cost to you, if you qualify for it, and
23 presumably you would. You have the right to have the clerk of
24 court file a notice of appeal for you, and the clerk will do
25 that forthwith, if you were to specifically request it.

1 You and your attorney have been given a form that
2 outlines certain rights and obligations in reference to an
3 appeal. If you haven't already done so, I want the two of you
4 to review it and be sure you understand it.

5 *THE DEFENDANT:* Yes, sir.

6 *THE COURT:* And once both of you are satisfied you
7 understand it, I want both of you to sign it and return it to
8 the court coordinator.

9 Has that been done, Mr. Couch?

10 *MR. COUCH:* Yes, sir.

11 *THE COURT:* Okay. The defendant's remanded to
12 custody, and you're excused, Mr. Couch.

13 *MR. COUCH:* Your Honor, before we leave, we would
14 object to the sentence under 18 USC 3553(a) as being
15 unreasonable. Thank you.

16 *MR. SMITH:* May I be excused, Your Honor?

17 *THE COURT:* You're excused.

18 *(End of Proceedings)*

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REPORTER'S CERTIFICATE

I, Debra G. Saenz, CSR, RMR, CRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 31st day of May, 2017.

/s/ Debra G. Saenz

DEBRA G. SAENZ, CSR, RMR, CRR
Texas CSR No. 3158
Official Court Reporter
The Northern District of Texas
Fort Worth Division

CSR Expires: 12/31/17

Business Address: 501 W. 10th Street, Room 424
Fort Worth, Texas 76102

Telephone: 817.850.6661

E-Mail Address: debbie.saenz@yahoo.com

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